



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0019; FRL-9965-37-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions received from the State of North Dakota on January 28, 2013, and April 22, 2014. The revisions are to Article 33-15 “Air Pollution Control” rules of the North Dakota Administrative Code. The revisions include amendments to add EPA Reference Method 22 to determine compliance with a visible emissions limit, add significance levels for PM_{2.5}, modify existing significance levels for NO₂ and SO₂ and remove the significance level for PM₁₀. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2017-0019 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for preparing your comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On January 28, 2013, the State of North Dakota submitted a SIP revision containing amendments to Article 33-15 Air Pollution Control rules. We approved some of these revisions on October 21, 2016 (81 FR 72716). The remaining amendments include the following: a new rule that would give the State authority to issue general permits, revisions to significance levels and a revision to the prevention of significant deterioration (PSD) rules. This action addresses the revisions to significance levels. We will address the new general permit rule and the revision to the PSD rules in a separate action. The North Dakota State Health Council adopted the amendments on August 14, 2012 (effective January 1, 2013).

On April 22, 2014, the State of North Dakota submitted a SIP revision containing amendments to Article 33-15 Air Pollution Control rules. We approved some of these revisions on October 21, 2016 (81 FR 72716). The remaining amendment adds EPA Reference Method 22 for determining opacity for limits expressed as zero percent opacity. The North Dakota State Health Council adopted the amendments on February 11, 2014 (effective April 1, 2014).

III. EPA's Review of the State of North Dakota's January 28, 2013 and April 22, 2014 Submittals

We evaluated North Dakota's January 28, 2013, and April 22, 2014 submittals regarding revisions to the State's Air Pollution Control rules as described in section II. We propose to approve all of the revisions under consideration in this proposed rulemaking.

A. January 28, 2013 SIP Submittal

We propose to approve PM_{2.5} concentration levels (0.3 µg/m³ annual and 1.2 µg/m³ 24-hour averaging time) the State added to 33-15-14-02.5.a in their January 2013 submittal. These PM_{2.5} values are the same as those in 40 CFR 51.165(b)(2) and are used in the same manner, i.e., a source “will be considered to cause or contribute to a violation of an ambient air quality standard” when such source “would, at a minimum, exceed the [listed] significance levels at any locality that does not or would not meet the applicable ambient standard.” We also propose to approve revised significance levels for SO₂ and NO₂ (one-hour averaging time) contained in the State's January 2013 revisions to 33-15-14-02.5.a (SO₂ one-hour significance level revised from 25 to 7.8 µg/m³ and NO₂ one-hour significance level revised from 25 to 7.5 µg/m³). These revised SO₂ and NO₂ one-hour significance levels, although not listed in 40 CFR 51.165(b)(2),

are consistent with our recommendations in guidance documents^{1,2} and strengthen the SIP. We note that the state regulation does not provide that a source with an impact below any of these significance levels is deemed to have demonstrated that it does not cause or contribute to a violation of the NAAQS. Thus, the rules that the EPA proposes to approve do not have an effect like those in 40 CFR 51.166(k)(2) and 52.21(k)(2) that were vacated and remanded by the U.S. Circuit Court of Appeals (*Sierra Club v. EPA*, 705 F.3d 458, 466 (D.C. Cir. 2013)).

Our proposed approval of the revisions to the State's significance levels at 33-15-14-02.5.a extends only to the use of these significance levels for the purpose stated in 40 CFR 51.165(b)(2). That is to determine that a major source or major modification will be considered to cause or contribute to a violation of a NAAQS when such source or modification would, at a minimum, exceed a significance level at any locality that does not or would not meet the applicable national standard.

In this same section, the State also removed the annual PM₁₀ significance level in 33-15-14-02.5.a. The annual PM₁₀ NAAQS was revoked in 2006 (71 FR 61144). North Dakota does not currently have any nonattainment areas for the annual PM₁₀ NAAQS. Thus, we propose to approve this revision.

B. April 22, 2014 SIP Submittal

¹ U.S. EPA Memo, General Guidance for Implementing the 1-hour SO₂ National Ambient Air Quality Standard in Prevention of Significant Deterioration Permits, Including an Interim 1-hour SO₂ Significant Impact Level, August 23, 2010.

² U.S. EPA Memo, General Guidance for Implementing the 1-hour NO₂ National Ambient Air Quality Standard in Prevention of Significant Deterioration Permits, Including an Interim 1-hour NO₂ Significant Impact Level, June 28, 2010.

The State's April 22, 2014 SIP submittal explains that the State added the EPA Reference Method 22 to the SIP³, which the State will use to determine compliance with a visible emissions limit specified in a permit issued as zero percent opacity except for a certain frequency.

In 33-15-03-05, Method of Measurement, the State added EPA Reference Method 22 of Appendix A ("Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares") adopted by reference in chapter 33-15-12, Standards of Performance for New Stationary Sources. This test method is used to determine the frequency of fugitive emissions from stationary sources and the frequency of visible smoke emissions from flares. Chapter 33-15-12 of the State's rules incorporates by reference 40 CFR part 60, appendix A, Test Methods as of July 1, 2015. The State's new rule specifies that Method 22 is applicable when "a visible emission limit is specified in a permit issued in accordance with this article as zero percent opacity except for certain frequency". 33-15-03-05.2. The "frequency" of fugitive emissions refers to the length of time that fugitive emissions will be visible over a specified time interval (i.e., one minute every 30 minutes, five minutes in two hours, etc.). Thus, a permit may specify zero percent opacity except for a certain frequency or length of time fugitive emissions may be observed over a specified time interval. The State's SIP rule does not make any substantive changes to Method 22, it merely incorporates the method into the SIP and allows it to be used to demonstrate compliance for sources that are subject to Article 15, "Air Pollution Control Rules." We propose to approve of the State's incorporation of Method 22 from 40 CFR part 60, appendix A into the SIP because this allows for use of an EPA test method when

³ State of North Dakota SIP Submittal Package (April 22, 2014), at PDF page 10.

specified in a permit issued in Article 15. Method 22 can be used for a variety of purposes, including determination of fugitive (non-stack) emissions and visible emissions from stationary sources (stacks) depending on the applicable emission standards⁴ and State permit requirements.

IV. What Action is the EPA Taking?

For the reasons expressed in III.A and III.B, the EPA is proposing to approve the following revisions, shown in Table 1, to the State's Air Pollution Control rules.

Table 1 - List of North Dakota Revisions that the EPA is Proposing to Approve

Revised Sections in January 28, 2013 and April 22, 2014 Submissions Proposed for Approval
<u>January 28, 2013 submittal:</u> 33-15-14-02.5.a
<u>April 22, 2014 submittal:</u> 33-15-03-05.2

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference North Dakota Administrative Code as described in section IV. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 8 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

VI. Statutory and Executive Orders Review

⁴ U.S. EPA Question and Answer Document. [EPA Method 22 – Visual Determination of Fugitive Emissions.](https://www3.epa.gov/ttn/atw/area/method22qa.doc)
<https://www3.epa.gov/ttn/atw/area/method22qa.doc>

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May

22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 13, 2017.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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